

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's Action dated February 23, 2009. Claims 1, 29 and 30 have been amended, without intending to abandon or to dedicate to the public any patentable subject matter. No claims have been canceled by this paper. Accordingly, Claims 1-31 are now pending. As set forth herein, reconsideration and withdrawal of the rejections of the claims are respectfully requested.

Initially, Applicant would like to thank Examiner Lucchesi and Examiner Medway for the courtesies extended during the in-person interview with the undersigned representative of Applicant held on June 9, 2009. During that meeting, potential amendments to the claims to specify that the recited tags were "formed as part of the inner housing" were discussed. Moreover, it was agreed that there were distinctions between the claimed invention and U.S. Patent No. 5,300,030 to Crossman et al., the primary reference. Accordingly, although the Examiners did indicate that an additional search would be performed, the amended claims presented herein are believed to be in condition for allowance.

Claims 1-13, 15-17, 19-22 and 29-31 stand rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,300,030 to Crossman et al. ("Crossman"). Claims 14 and 18 stand rejected under 35 U.S.C. §103 as being unpatentable over Crossman in view of U.S. Patent No. 6,270,479 to Bergens et al. ("Bergens"); Claims 23 and 24 stand rejected as being unpatentable over Crossman in view of U.S. Patent No. 5,211,625 to Sakurai et al. ("Sakurai"); Claims 26 and 27 stand rejected as being unpatentable over Crossman in view of U.S. Patent No. 5,634,906 to Haber et al. ("Haber"); and Claim 28 stands rejected as being unpatentable over Crossman in view of U.S. Patent No. 5,042,977 to Bechtold et al. ("Bechtold"). In order for a rejection under 35 U.S.C. §102 to be proper, each and every element as set forth in a claim must be found, either expressly or inherently described, in a single prior art reference. (MPEP §2131.) In order to establish a *prima facie* case of obviousness under §103, there must be some suggestion or motivation to modify the reference or to combine the reference teachings, there must be a reasonable expectation of success, and the prior art reference or references must teach or suggest all of the claim

limitations. (MPEP §2143.) Moreover, “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ 2d 1329, 1336 (Fed. Cir. 2006); See also, *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418, 127 S.Ct. 1727, 1741, 82 USPQ 2d 1385, 1396 (U.S. 2007) (quoting statement of *In re Kahn* with approval).) However, each and every element of the pending claims cannot be found in the cited references, whether those references are cited alone or in combination. For example, the cited references do not teach, suggest or disclose radially flexible tags formed as part of an inner housing that are in communication (or not) with various other components as claimed. Accordingly, the rejections of the claims should be reconsidered and withdrawn.

The claimed invention is generally directed to an injection device. The injection device includes an inner housing. Moreover, the inner housing features one or more flexible tags that are formed as part of the inner housing. As recited in the claims, the inner housing is movable between different positions, including positions in which a flexible tag is in communication with a component of a syringe, and a position in which a flexible tag is not in communication with a component of the syringe.

The Crossman reference is generally directed to injection devices. In the Office Action, the drive member 8 has been equated with the inner housing of the claimed invention. Moreover, beveled surfaces 12 of the drive member 8 have been equated with radially flexible rear tags, and outward flange 13 has been equated with forward tags. However, the out-turned hooks with beveled surfaces 12 of Crossman are never in communication with the barrel or the plunger of the syringe. In addition, the outward flange 13 of Crossman is not radially flexible and is not in contact with the plunger or barrel of the syringe. Therefore, the rejections of Claims 1-13, 15-17, 19-22 and 29-31 as being anticipated by Crossman should be reconsidered and withdrawn, for at least the reason that Crossman does not disclose radially flexible tags as claimed.

The Office Action acknowledges that the Crossman reference does not disclose compressed gas as an energy source. For such disclosure, the Bergens reference is cited. The Bergens reference is generally directed to an auto injector. More specifically, Bergens discusses various drives, including gas pressure. However, even if the Bergens reference

could properly be combined with the Crossman reference, the Bergens reference does not make up for the other deficiencies in the disclosure of Crossman. More particularly, even considered in combination, the Crossman and Bergens references do not teach, suggest or disclose radially flexible tags formed on an inner housing as claimed. Accordingly, the rejections of Claims 14 and 18 as obvious should be reconsidered and withdrawn.

The Office Action acknowledges that the Crossman reference does not disclose a protective rubber sheath or a floating rivet as recited by Claims 23 and 24 respectively. For such disclosure, the Office Action cites to Sakurai. However, even if Sakurai is considered to disclose such features and is properly combinable with the Crossman reference, Sakurai does not make up for the other deficiencies in the disclosure of Crossman. For example, Sakurai does not discuss radially flexible tags formed as part of an inner housing as claimed. Accordingly, for at least these reasons, the rejections of Claims 23 and 24 as obvious should be reconsidered and withdrawn.

The features of viewing windows as recited by Claims 26 and 27 are acknowledged as being absent from the Crossman reference. For such disclosure, the Office Action cites to Haber. However, even if the Haber reference is considered to disclose viewing windows as claimed, that reference does not make up for the other deficiencies in the disclosure of Crossman. In particular, Haber does not disclose radially flexible tags formed as part of an inner housing as claimed. Accordingly, the rejections of Claims 26 and 27 as obvious should be reconsidered and withdrawn.

The Office Action acknowledges that Crossman does not disclose a means for emitting an audible indication to a user that an injection is complete. For such disclosure, the Office Action relies on Bechtold. However, even if Bechtold is properly combinable with Crossman, Bechtold does not disclose radially flexible tags formed as part of an inner housing as claimed. Accordingly, for at least these reasons, the rejection of Claim 28 as obvious should be reconsidered and withdrawn.

In addition, at least some of the dependent claims recite additional patentable subject matter. For example, Claim 3 recites that one or more of the radially flexible tags is located at the end of a resiliently flexible leg. Claim 4 specifies that one or more of the radially flexible tags are rear tags that are situated at a rear end of the inner housing and are movable radially into and out of communication with the plunger. Claim 8 specifies that each rear

tag is substantially T-shaped. Claim 9 specifies one or more of the radially flexible tags are forward tags that are movable radially into and out of communication with the barrel, and Claim 10 further specifies that the forward tags are biased radially inwardly into communication with the barrel. Claim 12 specifies that the forward tag is movable out of communication with the barrel when aligned with the corresponding resource in the outer housing. Claim 13 specifies that the forward tag is substantially L-shaped. Claim 16 specifies that the device includes means for allowing the inner housing to move actually only forward with respect to the outer housing, and Claim 17 further specifies that the means recited by Claim 16 is an arrangement of serrations, barbs, ratchet teeth or the like intermediate the housings. Therefore, these dependent claims should be allowed for at least these additional reasons.

The application now appearing to be in form for allowance, early notification of same is respectfully requested. The Examiner is invited to contact the undersigned by telephone if doing so would be of assistance.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Bradley M. Knepper  
Registration No. 44,189  
1560 Broadway, Suite 1200  
Denver, Colorado 80202-5141  
(303) 863-9700

Date: June 17, 2009